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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN DOE, an individual

Plaintiff,

vs.

KEVIN SPACEY FOWLER, an
individual

Defendant.

) Case No.: 2:19-cv-00750-SK
)
) **DEFENDANT’S NOTICE OF**
) **MOTION AND MOTION TO**
) **DISMISS PLAINTIFF JOHN**
) **DOE’S CLAIMS OR,**
) **ALTERNATIVELY, TO**
) **REQUIRE PLAINTIFF TO**
) **PROVIDE A MORE DEFINITE**
) **STATEMENT**
)
) **[Fed. R. Civ. P. 12(b)(6), (e)]**
)
) Date: March 13, 2019
) Time: 10:00 a.m.
) Dept.: Courtroom 540
)
)
) Complaint Filed: September 27, 2018
)

TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 13, 2019 at 10:00 a.m., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Steve Kim, Courtroom 540, Roybal Federal Building And United States Courthouse, 255 E. Temple Street, 5th Floor, Los Angeles, California 90012, Defendant Kevin Spacey Fowler (“Mr. Fowler”), by and through his attorneys, will and hereby does move this Court to dismiss Plaintiff’s Complaint in the above-captioned matter or, alternatively, to require Plaintiff to amend his Complaint to provide a more definite statement.¹

Under Federal Rule of Civil Procedure 12(b)(6), Mr. Fowler brings this motion to dismiss all causes of action in the Complaint for failure to state a claim because Plaintiff impermissibly pleads anonymously through use of a pseudonym, without approval from this Court and in violation of Federal Rules of Civil Procedure 10(a) and 17(a) and other applicable law. Alternatively, Mr. Fowler seeks relief under Federal Rule of Civil Procedure 12(e), and asks the Court to require Plaintiff provide a more definite statement by amending his complaint to assert his claims under his real and complete name.

Also, during the meet and confer process, Plaintiff’s counsel agreed to dismiss the sixth cause of action for false imprisonment because it is barred by the applicable one-year statute of limitations. Because that dismissal has not yet been effectuated, and out of an abundance of caution, Mr. Fowler also seeks to dismiss that sixth cause of action under Rule 12(b)(6) for failure to state a claim.

¹ This case was initially assigned to the Honorable Steve Kim under the Direct Assignment of Civil Cases to Magistrate Judges Program in accordance with General Order 12-02. (*See* ECF No. 5.) Under that program, this assignment will remain in place only if the parties consent within fourteen (14) days after the Notice of Removal was filed on January 31, 2019. (*Id.*) This motion is being noticed and filed before the expiration of that time period. By noticing and filing this motion, Mr. Fowler does not consent to the assignment. If the parties ultimately do not both consent and the case is reassigned, Mr. Fowler will file and serve an amended notice of hearing, if appropriate.

1 This Motion is made following the conference of counsel pursuant to L.R. 7-
2 3, which took place on January 31, 2019. The parties continued to meet and confer
3 after that conference but could not resolve the matters that are the subject of this
4 Motion.

5 This Motion is based upon this notice, the attached Memorandum of Points
6 and Authorities, the Request for Judicial Notice filed concurrently, the declaration
7 of Jay P. Barron filed concurrently, the [Proposed] Order lodged concurrently, the
8 pleadings, records, and files in this action, and upon any and all oral and
9 documentary evidence presented at or before the hearing on this Motion.

10
11 Respectfully submitted,
12 Dated: February 7, 2019 KELLER/ANDERLE LLP

13 By: /s/ Jennifer L. Keller

14 Jennifer L. Keller
15 Chase A. Scolnick
16 Jay P. Barron
17 *Attorneys for Defendant*
18 *Kevin Spacey Fowler*
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MEMORANDUM**I. INTRODUCTION**

This action was improperly filed by a plaintiff using the pseudonym “John Doe” (“Plaintiff”). Using a pseudonym violates the longstanding requirement of judicial proceedings being open to the public, and multiple Federal Rules of Civil Procedure, including the requirement that the Complaint identify the names of the parties and that a case be litigated by the real party in interest. *See* Fed. R. Civ. P. 10(a), 17(a). The ability to plead anonymously is rarely allowed and only in an exceptional case where the plaintiff can establish that his need for anonymity outweighs the prejudice and unfairness to the other parties, and the public’s interest in open judicial proceedings.

Plaintiff has not made and cannot make that requisite showing, and his Complaint is therefore deficient and should be dismissed. He has not sought leave from this Court to allow him to plead anonymously. His Complaint alleges no grounds that justify his using a pseudonym, but merely claims a blanket desire for “privacy” that falls far short of circumstances under which courts permit use of a pseudonym. Plaintiff alleges no threatened harm, and there appears to be none. Rather, the party more vulnerable to threats and privacy invasion is defendant Kevin Spacey Fowler (“Mr. Fowler”) given his public profile.

Mr. Fowler will be severely prejudiced if Plaintiff remains anonymous. Plaintiff’s identity has not even been disclosed to Mr. Fowler, let alone to the public via his Complaint. Even if it were disclosed to him, Mr. Fowler should not be forced to litigate against a party who can litigate behind the cloak of anonymity, especially given that such unwarranted secrecy would inhibit and complicate Mr. Fowler’s ability to obtain discovery, investigate Plaintiff’s claims, gather information about Plaintiff from third parties and prepare a defense. (Meanwhile, Plaintiff’s counsel is affirmatively using the media to heighten scrutiny of Mr. Fowler, and actively promotes the case on her website. These are hardly the actions of someone who

wishes to discreetly litigate the issues and preserve her client's privacy.) Nor can Plaintiff show his desire for privacy warrants deviating from the common law requirement of open judicial proceedings, as such an unprecedented standard would encourage an avalanche of cases litigated by anonymous parties outside the public view.

The Complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6) based on Plaintiff's improper attempt to proceed anonymously, with no grounds to do so. At minimum, Plaintiff should be required to amend his Complaint to use his real and complete name.

II. BRIEF FACTUAL BACKGROUND

On September 27, 2018, Plaintiff filed his complaint alleging: (1) sexual battery (Cal. Civ. Code § 1708.5), (2) gender violence (Cal. Civ. Code § 52.4), (3) battery, (4) assault, (5) intentional infliction of emotional distress, and (6) false imprisonment, based on a single alleged incident that occurred "[o]n or about October 2016." (*See generally* ECF No. 1-1 ("Complaint").) The Complaint claims Plaintiff pleads under a pseudonym "to protect PLAINTIFF's privacy." (*Id.*, ¶ 5.)

Plaintiff did not serve Mr. Fowler until January 3, 2019. (ECF No. 1-4.) Mr. Fowler timely removed this case to federal court on January 31, 2019. (ECF No. 1.)

Also on January 31, 2019, the parties engaged in a telephonic meet and confer regarding the substance of this motion. (Decl. of Jay Barron, ¶ 4.) During a subsequent discussion on February 5th, Plaintiff's counsel agreed to voluntarily dismiss the sixth cause of action for false imprisonment but the parties could not resolve the remaining issues. (*Id.* ¶ 5.)

III. LEGAL STANDARD ON A MOTION TO DISMISS

Under Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss is proper where the plaintiff fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v.*

1 *Twombly*, 550 U.S. 544, 570 (2007). The plaintiff must allege the “‘grounds’ of his
2 ‘entitlement to relief’” and the “[f]actual allegations must be enough to raise a right
3 to relief above the speculative level.” *Id.* at 555.

4 A motion to dismiss under Rule 12(b)(6) is appropriately granted where the
5 complaint shows a claim is barred by the applicable statute of limitations. *See, e.g.,*
6 *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir.
7 2010); *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980). Likewise, a
8 Rule 12(b)(6) motion may challenge a complaint that fails to identify the plaintiff and
9 therefore alleges no claim upon which relief can be granted. *See, e.g., Doe v. Apstra,*
10 *Inc.*, 2018 WL 4028679, at *2 (N.D. Cal. Aug. 23, 2018) (recognizing district courts
11 can dismiss complaint based on failure to comply with Rule 10(a)); *Roe v. State of*
12 *New York*, 49 F.R.D. 279, 281 (S.D.N.Y. 1970) (“[I]f a complaint does not identify
13 any plaintiff in the title or otherwise, then its filing is ineffective to commence an
14 action. The Court must be able to identify from the complaint at least one plaintiff
15 by name; otherwise, no action has been commenced.”)²

16 **IV. PLAINTIFF HAS NO GROUNDS FOR PROCEEDING UNDER A**
17 **PSEUDONYM, AND HIS CLAIMS MUST BE DISMISSED OR**
18 **AMENDED AS A RESULT**

19 **A. A Plaintiff May Proceed Anonymously Only Under Very Limited**
20 **Circumstances**

21 Rule 10(a) provides “[t]he title of the complaint must name all the parties.”
22 Likewise, Rule 17(a) provides that “[a]n action must be prosecuted in the name of
23 the real party in interest.” Using a pseudonym contravenes these rules and “runs
24 afoul of the public’s common law right of access to judicial proceedings.” *See Does*
25

26 ² “When a party wishes to proceed anonymously or under a pseudonym, it
27 must first petition the district court for permission to do so.” *W.N.J. v. Yocom*, 257
28 F.3d 1171, 1172 (10th Cir. 2001). Although this action recently was removed to this
federal court, Plaintiff has not made any such petition, nor expressed an intention to
do so.

1 *I thru XXXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000); *Doe v.*
 2 *Kamehameha Schools/Bernice Pauahi Bishop Estate*, 596 F.3d 1036, 1042 (9th Cir.
 3 2010) (“The normal presumption in litigation is that parties must use their real
 4 names. . . . In this circuit, the common law rights of access to the courts and judicial
 5 records are not taken lightly.”)

6 The Ninth Circuit allows a party to proceed anonymously only in an “unusual
 7 case.” *Advanced Textile*, 214 F. 3d at 1067; *see also Doe v. Frank*, 951 F.2d 320,
 8 323 (11th Cir. 1992) (“It is the exceptional case in which a plaintiff may proceed
 9 under a fictitious name.”). A party may preserve anonymity only in those special
 10 circumstances “when the party’s need for anonymity outweighs prejudice to the
 11 opposing party and the public’s interest in knowing the party’s identity.” *Advanced*
 12 *Textile*, 214 F.3d at 1068. To determine whether a party should be allowed to
 13 proceed anonymously, district courts must balance at least five factors: ““(1) the
 14 severity of the threatened harm, (2) the reasonableness of the anonymous party’s
 15 fears, . . . (3) the anonymous party’s vulnerability to such retaliation,’ (4) the
 16 prejudice to the opposing party, and (5) the public interest.” *Kamehameha*, 596 F.3d
 17 at 1042 (citing *Advanced Textile*, 214 F.3d at 1068).³

18
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 23 ³ Even in the unusual case in which a party is initially permitted to proceed
 24 anonymously, a court must continue to evaluate and weigh the various factors,
 25 because circumstances may change as the litigation progresses. *Advanced Textile*,
 26 214 F.3d at 1069. And a party cannot maintain use of a pseudonym when a case
 27 proceeds to trial, because “the defendant’s ability to receive a fair trial will likely be
 28 compromised if the Court allows the plaintiff to continue using a pseudonym, as the
 jurors may construe the Court’s permission for the plaintiff to conceal her true
 identity as a subliminal comment on the harm the alleged encounter with the
 defendant has caused the plaintiff.” *Doe v. Cabrera*, 307 F.R.D. 1, 10 (D.D.C.
 2014).

B. Plaintiff Is Required To Litigate In His Own Name Because None Of The Applicable Factors Weigh In Favor Of Allowing Plaintiff to Proceed Anonymously

1. Severity of Threatened Harm

Plaintiff has made no showing of any threatened harm, let alone a threat or harm of such severity it would justify use of a pseudonym. The Complaint attempts to justify the use of a pseudonym merely on Plaintiff's unsubstantiated request for privacy. (Compl. ¶ 5.) But Plaintiff does not allege he has been threatened by anyone – by Mr. Fowler or anyone else. And courts repeatedly hold that any potential personal embarrassment or desire for privacy fail to provide sufficient grounds to entitle a plaintiff to proceed anonymously. *See Doe v. Rostker*, 89 F.R.D. 158, 162 (N.D. Cal. 1981) (“That the plaintiff may suffer some embarrassment or economic harm is not enough. There must be a strong social interest in concealing the identity of the plaintiff.”); *Doe v. Goldman*, 169 F.R.D. 138, 141 (D. Nev. 1996) (“Courts have generally rejected attempts to proceed under fictitious names where plaintiffs are concerned solely with economic well-being and possible embarrassment or humiliation.”).

This is not a close case. Any speculative or attenuated harm to Plaintiff does not even rise close to the level found to be *insufficient* for plaintiff to plead anonymously in *Doe v. Shakur*, 164 F.R.D. 359 (S.D.N.Y. 1996). There, the court refused to permit a plaintiff to proceed anonymously where she sought damages based on an alleged sexual assault and did not want to be publicly identified. The court recognized that plaintiff alleged she was a sexual assault victim. But the court held that her privacy concern was outweighed by other considerations, including her choice to bring a civil lawsuit making allegations that put her credibility at issue, the disadvantage to defendant of having to litigate against an anonymous person while being publicly accused, and the public's legitimate interest in the facts of the lawsuit. *Id.* at 361-362. The court also noted that the plaintiff's “claims of public humiliation

1 and embarrassment . . . are not sufficient grounds for allowing a plaintiff in a civil
2 case to proceed anonymous.” *Id.* at 362.

3 As in *Shakur*, Plaintiff’s claims here, and his desire to protect his privacy
4 cannot justify use of a pseudonym. And any perceived harm is outweighed by other
5 considerations, including Plaintiff’s decision to bring this case, to assert claims
6 placing his credibility at issue, the disadvantage to Mr. Fowler of litigating against an
7 anonymous plaintiff, and the public’s interest. As in *Shakur*, the Court should reject
8 Plaintiff’s attempt to proceed anonymously.

9 2. Reasonableness of Anonymous Party’s Claimed Fears

10 Any potential fear Plaintiff may claim if required to disclose his name is
11 entirely speculative, especially given no threatened retaliation or harm is articulated
12 in the Complaint. Courts do not permit a plaintiff, like the one here, to sue in a
13 fictitious name merely because he can hypothesize about some imagined fear.

14 In *Kamehameha*, four minor children sought to proceed anonymously in their
15 lawsuit challenging the admission standards of Hawaiian schools which granted
16 admission to students of Native Hawaiian blood before admitting any other
17 applicant. *Kamehameha*, 596 F.3d at 1039. The Ninth Circuit upheld the district
18 court’s order finding plaintiffs’ fear of retaliation was unreasonable where threats of
19 physical harm were directed at plaintiffs in internet postings and the U.S. Attorney
20 warned about increased threats of violence against children in plaintiffs’ position. *Id.*
21 at 1045. The district court found those threats too attenuated and speculative to
22 suggest a reasonable fear of such threats being carried out, and the Ninth Circuit
23 affirmed. *Id.* Here, any fear Plaintiff may claim would be more speculative,
24 uncertain, and non-specific than the fears found to be unreasonable and insufficient
25 in *Kamehameha*.

26 3. Vulnerability to Retaliation

27 Plaintiff faces no particular vulnerability to any retaliation. An important
28 consideration that can support anonymity is where the anonymous party is a minor.

1 *Kamehameha*, 596 F.3d at 1045. But Plaintiff here is not a minor and has no special
 2 vulnerability to retaliation that warrants a pseudonym. He acknowledges he has
 3 worked as a massage therapist in the Los Angeles area for 35 years and therefore
 4 almost certainly is in his mid-50s or beyond. (*See* Compl. ¶ 5.) He chose to bring
 5 this civil lawsuit seeking to vindicate his own rights, and he therefore must stand
 6 behind the allegations publicly. *See Shakur*, 164 F.R.D. at 361.

7 4. Prejudice Or Unfairness To Defendant

8 Conversely, Mr. Fowler will suffer extreme prejudice and unfairness if
 9 Plaintiff proceeds anonymously. Plaintiff's identity has not been disclosed to Mr.
 10 Fowler or his counsel. During the meet and confer process, Mr. Fowler's counsel
 11 asked that Plaintiff's identity be disclosed to them, but that request was refused.
 12 (Barron Decl., ¶ 5.) Mr. Fowler cannot prepare initial disclosures, respond to
 13 discovery, or prepare a defense against claims by an unnamed and anonymous
 14 complainant.

15 Moreover, using a pseudonym is unfair to Mr. Fowler, even if Plaintiff's
 16 identity is disclosed to Mr. Fowler's counsel but not to the public in his Complaint.
 17 Using a pseudonym inhibits Mr. Fowler's ability to conduct discovery, especially
 18 third-party discovery. Further, it prevents possible unknown third parties with
 19 information about Plaintiff and his factual allegations from coming forward with
 20 information relevant to Mr. Fowler's defense. *See, e.g., Doe v. Del Rio*, 241 F.R.D.
 21 154, 159 (S.D.N.Y. 2006) ("[C]oncealing the name of a party could deprive a litigant
 22 and the court of a chance that a yet unknown witness would, upon learning that fact
 23 about the case, know to step forward with valuable information about the events or
 24 the credibility of witnesses."); *San Bernardino County Dep't of Public Soc. Serv. v.*
 25 *Superior Court*, 232 Cal.App.3d 188, 283 Cal.Rptr. 332, 341 (Cal. Ct. App. 1991)
 26 ("[O]pen proceedings discourage perjury and might encourage other witnesses to
 27 come forward which in turn leads to more accurate fact-finding."). And as a public
 28 figure, Mr. Fowler is far likelier to be the target of threats and harm than Plaintiff.

1 Further, Plaintiff's allegations place his credibility directly at issue. He should
 2 not be permitted to hide behind a pseudonym while Mr. Fowler must litigate and
 3 defend his reputation in public. Such a result is fundamentally unfair. *See Shakur*,
 4 164 F.R.D. at 361 ("Shakur has been publicly accused. If plaintiff were permitted to
 5 prosecute this case anonymously, Shakur would be placed at a serious disadvantage,
 6 for he would be required to defend himself publicly while plaintiff could make her
 7 accusations from behind a cloak of anonymity."). Courts recognize that the
 8 unfairness of a pseudonym is exacerbated when the defendant is an individual – as is
 9 the case here – rather than a governmental or corporate entity. *See Cabrera*, 307
 10 F.R.D. at 8 ("This consideration is significant because governmental bodies do not
 11 share the concerns about reputation that private individuals have when they are
 12 publicly charged with wrongdoing." (internal quotation omitted)).

13 Plaintiff's counsel already has encouraged and facilitated publicity of his
 14 allegations, including in multiple articles on the lawsuit filed in industry media
 15 outlets and promoted on Plaintiff's counsel's website. (Barron Decl., ¶ 6, Ex. A;
 16 RJN, ¶ 1.) Plaintiff is the one who brought this case, and he must stand behind his
 17 (baseless) allegations by pleading in his name rather than remain anonymous. *Shakur*,
 18 164 F.R.D. at 361 ("Fairness requires that she be prepared to stand behind her
 19 charged publicly."); *Femedeer v. Haun*, 227 F.3d 1244, 1246 (10th Cir. 2000)
 20 ("Ordinarily, those using the courts must be prepared to accept the public scrutiny
 21 that is an inherent part of public trials.").

22 5. The Public Interest

23 Finally, the public interest overwhelmingly supports Plaintiff's pleading in his
 24 real name. The requirement that parties use their real names "is loosely related to the
 25 public's right to open courts . . . and the right of private individuals to confront their
 26 accusers." *Kamehameha*, 596 F.3d at 1042. This public interest cannot be dismissed
 27 easily:

1 The purpose of [Rule 10(a)] is not simply administrative, it is to apprise
 2 the parties of their opponents, and it protects the public's legitimate
 3 interest in knowing all the facts and events surrounding court
 4 proceedings. When anyone – local or foreign – invokes the potential
 5 power and authority of a United States District Court, the public has a
 legitimate right to know on whose behalf their institutions are being
 used, unless good cause to do otherwise is shown.

6 *Doe v. Texaco*, 2006 WL 2850035, at *6 (N.D. Cal. Oct. 5, 2006) (internal
 7 quotations and citation omitted); *Kamehameha*, 596 F.3d at 102 (“In this circuit, the
 8 common law rights of access to the courts and judicial records are not taken
 9 lightly.”). Among the facts that the public has a legitimate interest in knowing “is
 10 the identity of the parties.” *Shakur*, 164 F.R.D. at 361; *Kamehameha*, 596 F.3d at
 11 1046 (a party's privacy concerns cannot overcome the “paramount importance of
 12 open courts”).

13 Mr. Fowler has a right to face his accuser and vindicate his name in a public
 14 proceeding. That ability is compromised if Plaintiff remains anonymous, especially
 15 where there is no legitimate threat of reprisal.

16 **C. If The Court Decides Not To Dismiss Plaintiff's Claims, The Court**
 17 **Should Require Plaintiff To Amend His Pleading To Provide A**
 18 **More Definite Statement By Disclosing His Identity And Greater**
 19 **Specificity**

20 The Court should dismiss Plaintiff's claims under Rule 12(b)(6) because
 21 Plaintiff cannot maintain a claim that fails to identify the parties or proceed in the
 22 name of the real party in interest, and he has refused thus far to provide his true
 23 identity. *See, e.g.*, Fed. R. Civ. P. 10(a), 17(a). But if the Court declines, the Court
 24 can and should require Plaintiff to amend his complaint to provide a more definite
 25 statement that discloses his full and complete identity. *See* Fed. R. Civ. P. 12(e).

26 Under Rule 12(e), a party may move for a more definite statement of a
 27 pleading so vague or ambiguous that the party cannot reasonably prepare a response.
 28 Fed. R. Civ. P. 12(e). A motion for a more definite statement under Rule 12(e) is a

1 proper mechanism to require the disclosure of a plaintiff's identity where the plaintiff
 2 pleads under a pseudonym. *See, e.g., Heram v. United States*, 2014 WL 3836912, at
 3 *1-3 (E.D. Cal. Aug. 1, 2014) (granting motion under Rule 12(e) and requiring
 4 plaintiff to file amended complaint that contains his actual name). Further, the
 5 Complaint is intentionally amorphous about the lone incident that forms the basis for
 6 all of Plaintiff's claims. Although Plaintiff presumably has some records or
 7 documentation that reflect the precise date and location of the alleged incident, the
 8 Complaint vaguely states it occurred "[o]n or about October 2016" at an unidentified
 9 residence in Malibu. (Compl. ¶¶ 8-9.) Plaintiff should be ordered to provide a
 10 precise date and location in his amended pleading.

11 **V. THE SIXTH CAUSE OF ACTION FOR FALSE IMPRISONMENT IS**
 12 **BARRED BY THE APPLICABLE ONE-YEAR STATUTE OF**
 13 **LIMITATIONS**

14 During the meet and confer process, Plaintiff's counsel agreed to dismiss the
 15 sixth cause of action for false imprisonment after Mr. Fowler's counsel informed
 16 them it was barred by the statute of limitations. (Barron Decl., ¶ 5.) As a result, Mr.
 17 Fowler anticipates Plaintiff will file a voluntary dismissal of that cause of action, but
 18 such dismissal has not been filed by the time this motion had to be filed. Therefore,
 19 out of an abundance of caution, and to the extent it does not become moot by
 20 Plaintiff's expected dismissal of the sixth cause of action, Mr. Fowler seeks an order
 21 dismissing that cause of action because it is barred by the statute of limitations.

22 An action for false imprisonment must be commenced within one year. Civ.
 23 Proc. Code, § 340(c). The limitations period accrues upon release from the alleged
 24 confinement. *See Scannell v. County of Riverside*, 152 Cal. App. 3d 596, 606 (1984).

25 The Complaint alleges the incident that forms the basis of all of Plaintiff's
 26 claims occurred "[o]n or about October 2016." (*See* Compl. ¶¶ 8, 9, 27, 33.) The
 27 purported confinement occurred when Fowler momentarily blocked access to the exit
 28 of the room where the alleged incident occurred before Fowler "eventually allow[ed]"

1 PLAINTIFF to leave.” (*Id.* ¶ 18, 21.) The Complaint does not allege wrongdoing or
 2 confinement on any other occasion other than this single incident.

3 Plaintiff did not file his Complaint until nearly two years later on September
 4 27, 2018, as reflected by the conformed copy stamp on the original complaint. (*See*
 5 ECF No. 1-1.) Therefore, Plaintiff’s false imprisonment claim is barred by the
 6 applicable one-year statute of limitations, and it cannot be corrected by amendment.
 7 The Court should dismiss that claim without leave to amend.

8 **VI. CONCLUSION**

9 Plaintiff’s sixth claim for false imprisonment is barred by the statute of
 10 limitations as a matter of law, and it should be dismissed with prejudice. Separately,
 11 Plaintiff has not established, and cannot establish, that this is an exceptional case
 12 justifying his pleading anonymously. All of his claims, therefore, should be
 13 dismissed, or, alternatively, he should be required to amend his pleading to provide a
 14 more definite statement disclosing his full and complete identity.

15
 16
 17 Dated: February 7, 2019

Respectfully submitted,

KELLER/ANDERLE LLP

18 By: /s/ Jennifer L. Keller

Jennifer L. Keller

Chase A. Scolnick

Jay P. Barron

Attorneys for Defendant

Kevin Spacey Fowler

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 and not a party to the within action. My business address is 18300 Von Karman Avenue, Irvine, California 92612-1057. On **February 7, 2019**, I served the foregoing document described as

**DEFENDANT'S NOTICE OF MOTION AND MOTION TO DISMISS
PLAINTIFF JOHN DOE'S CLAIMS OR, ALTERNATIVELY, TO REQUIRE
PLAINTIFF TO PROVIDE A MORE DEFINITE STATEMENT**

on the following-listed attorneys who are not on the list to receive e-mail notices for this case (who therefore require manual notice) by the following means of service:

SERVED BY U.S. MAIL: There are currently no individuals on the list to receive mail notices for this case.

SERVED BY CM/ECF. I hereby certify that, on **February 7, 2019**, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. The filing of the foregoing document will send copies to the following CM/ECF participants:

The following are those who are currently on the list to receive e-mail notices for this case.

Genie Harrison, genie@genieharrisonlaw.com
Amber Phillips, amber@genieharrisonlaw.com
Mary Olszewska, mary@genieharrisonlaw.com

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on **February 7, 2019** at Irvine, California.

/s/ Courtney L. McKinney

Courtney L. McKinney